

Remarks

The Office Action has been reviewed with care and certain amendments made to claims 1, 16, 17 and 39 which are believed to place this application in condition for allowance. Applicants appreciate the attention of the Examiner to this patent application

Claims 1-11, 18, 39, 45-50 and 54 were rejected under 35 USC 102(b) as being anticipated by Stang et al.'s "Plant Growth Regulators Alter Fruit Set and Yield in Cranberry (*Vaccinium Macrocarpon* Ait.)", *Acta Horticulturae* 241, 1989, pp. 277-283. Claims 12-17, 19-38, 40-44 and 51-53 were rejected under 35 USC 103(a) as being obvious over Stang et al.

Applicant has added claims 42 and 55. No new matter is entered.

102 rejection of Claims 1-11 and 18

Previously presented claims 1-19 claimed a method comprising application of a growth regulating composition such that substantially every cranberry has a mature mass of less than about 0.75 grams. The April 9, 2002 Office Action states that Stang et al. discloses mean fruit weight for certain treated cranberries to be 0.47 grams and 0.53 grams. The Office Action suggests that these mean weights indicate that most of the cranberries have a weight less than about 0.75 grams.

As amended, claim 1 requires that most of the cranberries have a mature mass of less than about 0.6 grams. Such a requirement is clearly not disclosed, expressly or inherently, by Stang et al. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), Applicant respectfully asserts that claims 1-19 and 55 are not anticipated by Stang et al. Therefore, Applicant requests that the 102(b) rejection of claims 1-11 and 18 be withdrawn.

102 rejection of Claims 39, 45-50 and 54

Previously presented claims 39-54 claimed a yield of miniature cranberries from a cranberry plant wherein substantially all the cranberries have mature masses of less than about 0.75 grams. As amended, these claims require that most of the cranberries have mature

masses of less than about 0.6 grams. Again, such a requirement is not disclosed expressly or inherently by Stang et al.; therefore, Applicant requests that the 102(b) rejection of claims 39, 45-50 and 54 be withdrawn.

103 rejections of Claims 1-19

The Office Action rejected claims 12-17 and 19 as being obvious in view of Stang et al. The rejection contends that it would be obvious to one of ordinary skill in the art to further experiment in view of Stang et al. in order to find the specific claimed ranges. Submitted herewith are declarations from Jonathan D. Smith, Ph.D. and Donald Wandler which support the nonobviousness and patentability of claims 1-19 and 55.

Specifically, the Smith declaration states that others have failed to develop a method for commercially growing miniature cranberries which provides that most of the cranberries have a mature mass of less than about 0.6 grams, that the claimed invention was made despite skepticism of experts in the field, that the claimed invention was an unexpected result of his work, that the claimed invention addressed the previously unidentified problem of the size of cranberries and achieved commercial success due entirely to the miniature cranberries' characteristics. The Wandler declaration further supports the great commercial success of the claimed cranberries.

In view of these declarations and the amendments made herein it is clear that applicant's claims 1-19 and 55 are patentably distinguishable over Stang et al. The fact that others have failed to develop a method as claimed demonstrates that Applicant's invention is not obvious. The fact that the invention was made despite skepticism of experts in the field supports the nonobviousness of Applicant's invention. The fact that the claimed invention was an unexpected result of Dr. Smith's work supports the nonobviousness of his invention. The fact that others had not previously identified the problem concerning the size of cranberries demonstrates that Applicant's invention is not obvious. Finally, the fact that the Applicant's invention has been embraced by the cranberry-consuming community immediately upon its introduction to the market and at significantly higher prices than conventional cranberries supports its nonobviousness.

103 rejections of Claims 20-38

Claims 20-28 require a method of increasing fruit set on cranberry plants comprising commercially applying to the cranberry plants of a plant-growth-regulating composition in an amount and at a time such that the plants have a fruit set of at least about 80%. The highest fruit set previously achieved in the cited prior art is 57%. Such a significant improvement is particularly noteworthy since the field of cranberry cultivation has been particularly interested in increasing fruit set. Indeed, the Stang et al. study was performed specifically to evaluate improved fruit set performance.

The Smith and Wandler declarations support the nonobviousness of claims 19-38. In particular, the Smith declarations states that the claimed method of increasing fruit set on cranberry plants such that the plants have a fruit set of at least about 80% solves the long-standing, but heretofore unsolved need for a method of increasing fruit sets in cranberry plants, that the claimed method was invented despite the failure of others, that the claimed method was invented despite the apparent skepticism of experts in the field, that the claimed method was an unexpected result of his work in cranberry cultivation, and that the claimed method results in cranberries which have achieved great commercial success due to the cranberries' characteristics. The Wandler declaration further supports the commercial success of the cranberries.

In view of these declarations it is clear that applicant's claims 20-38 are nonobvious in view of and patentably distinguishable over Stang et al.

103 rejections of Claims 39-54

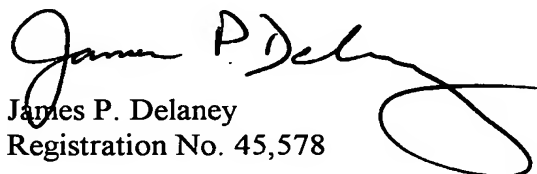
The Office Action rejected claims 40-44, 51 and 53 as being obvious in view of Stang et al. The rejection contends that it would be obvious to one of ordinary skill in the art to further experiment in view of Stang et al. in order to find the specific claimed ranges. Submitted herewith are declarations from Jonathan D. Smith, Ph.D. and Donald Wandler which support the patentability of claims 39-54.

Specifically, the Smith declaration states that others have failed to develop a yield of miniature cranberries from a cranberry plant wherein most of the cranberries have mature masses of less than about 0.6 grams, that the claimed invention was made despite skepticism of experts in the field, that the claimed invention was an unexpected result of his work, that the claimed invention addressed the previously unidentified problem of the size of cranberries and achieved commercial success due entirely to the miniature cranberries' characteristics. The Wandler declaration further supports the great commercial success of the claimed cranberries.

In view of these declarations it is clear that applicant's claims 39-54 are nonobvious in view of and patentably distinguishable over Stang et al.

Applicant believes that all rejections have been traversed by amendment and/or argument and all claims are in proper form for allowance. Early favorable action is earnestly solicited. The Examiner is invited to call the undersigned attorney if that would be helpful in facilitating resolution of any issues which might remain.

Respectfully submitted,


James P. Delaney
Registration No. 45,578

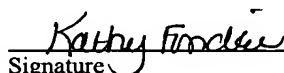
Dated: August 11, 2003
Jansson, Shupe & Munger, Ltd.
245 Main Street
Racine, WI 53403-1034
Atty. Docket No. RBC-101US

Attachments (Smith Declaration and Wandler Declaration)

Certificate of Express Mail EV339301075US

I hereby certify that this correspondence is being deposited with the United States Postal Service as EXPRESS MAIL in an envelope addressed to: Mail Stop Fee Amendment, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450 on August 11, 2003.

Name: Kathy Finder

 8/11/03
Signature Date